

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 ZANGO, INC.,

10 Plaintiff,

11 v.

12 KASPERSKY LAB, INC.,

13 Defendant.

No. C07-0807 JCC

TEMPORARY RESTRAINING ORDER

[PROPOSED]

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15 This CAUSE came before the Court on May 29, 2007 on Plaintiff Zango's Motion for  
16 Temporary Restraining Order.

17 The Court did / did not hear oral argument from Plaintiff's counsel. Defendants were  
18 provided with notice of Plaintiff's Motion for Temporary Restraining Order and Defendants  
19 did / did not appear at the hearing. The Court considered the following:

- 20  
21 1. Plaintiff's Motion for Temporary Restraining Order;  
22 2. Declaration of Steve Fogg;  
23 3. Declaration of Richard Purcell;  
24 4. Declaration of Gregg Berretta; and  
25

TEMPORARY RESTRAINING ORDER  
[PROPOSED] – 1  
No. C07-0807 JCC

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Seattle, Washington 98154-1051  
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1           5. The other pleadings and filings in this matter.

2           Based on the argument of counsel and the evidence presented, the Court makes the following  
3           findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 65:

4           1.       Plaintiff Zango, Inc. ("Zango") is an online media company based in Bellevue,  
5           Washington that provides consumers access to a catalog of online videos, games, music, tools  
6           and utilities. Zango offers its catalog to consumers free of charge in exchange for an  
7           agreement to view advertising, and also offers a premium version of its content that gives  
8           consumers access without advertising.  
9

10          2.       Kaspersky Lab, Inc. ("Kaspersky") is in the business of developing and  
11          marketing various computer protection and security software programs, including anti-virus  
12          protection. Kaspersky markets and distributes computer protection and security software  
13          programs under its own name, and also sells such programs to distributors and customers who  
14          utilize Kaspersky software in their own products. Kaspersky software prevents installation  
15          and download of Zango programs, damages and interferes with Zango programs already  
16          resident on a user's computer, and damages Zango's website in such a way that potential  
17          customers are prevented from downloading Zango's products.  
18

19          3.       Zango has suffered significant damage to its customer base, reputation and  
20          business model as a result of the actions taken by Kaspersky. This damage is ongoing so long  
21          as Kaspersky maintains identifiers for Zango's applications within its Anti-virus software  
22          application and detection database, and so long as Kaspersky refuses to provide updated  
23          versions of its application and database to its existing customers.  
24  
25

4. In determining whether to issue a temporary restraining order, this Court considers: (1) the likelihood of success on the merits, (2) the possibility that the plaintiff will suffer irreparable injury without injunctive relief, (3) the extent to which the “balance of hardships” favors the plaintiff, and (4) whether injunctive relief would advance the public interest (in certain cases). *Los Angeles Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980); *Del Toro-Chacon v. Chertoff*, 431 F. Supp. 2d 1135, 1140 (W.D. Wash. 2006). *See also Citizens Alliance to Protect our Wetlands v. Wynn*, 908 F. Supp. 825, 829 (W.D. Wash. 1995) (the standard for preliminary injunctions also applies to temporary restraining orders). The movant may satisfy its burden “by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor.” *Los Angeles Mem’l Coliseum*, 634 F.2d at 1201.

5. It is probable that Plaintiff will succeed on the merits. The tort of intentional interference with contractual relations or business expectancy prohibits one from purposefully interfering with a valid contractual relationship or business expectancy, where such interference is done for an improper purpose and results in damage. It is also likely that Plaintiff will succeed on the remaining claims for trade libel, violation of the Washington Consumer Protection Act, and unjust enrichment.

6. Defendants’ actions have caused irreparable harm to Plaintiff’s customer base, reputation and goodwill. The invasion of Plaintiff’s rights is current and ongoing and will continue to cause actual and substantial injury to Plaintiff, absent the issuance of an order enjoining Defendants.

1           7.       The irreparable harm suffered by Plaintiff outweighs any potential harm  
2 Defendants may suffer from the issuance of this Order.

3           For the reasons set forth in the above findings of fact and conclusions of law, it is  
4 hereby ORDERED:  
5

6           1.       Plaintiff Zango's Motion for Temporary Restraining Order is GRANTED.

7           2.       Within \_\_\_\_\_ hours from the issuance of this Order, Defendant Kaspersky  
8 shall eliminate all references to Zango's products, ClassIDs, code, files, fingerprints, web  
9 addresses, and all other distinguishing characteristics from all products, definition files,  
10 detection databases, and anti-virus engines sold, marketed, licensed, distributed or otherwise  
11 made available by Kaspersky, and provide all existing Kaspersky customers, partners,  
12 licensees, or others utilizing Kaspersky's detection databases or anti-virus engine(s) in any  
13 manner, including but not limited to PC Tools, CheckPoint, and AOL, with updated products,  
14 definition files, detection databases, and anti-virus engine(s) consistent with the foregoing.  
15

16          3.       Within 72 hours from the time this Court issues this Order, Defendant will  
17 provide to Plaintiff a list of all existing Kaspersky customers, partners, licensees, or others  
18 utilizing Kaspersky's detection databases or anti-virus engine(s) in any manner so that  
19 Plaintiff may ensure compliance with the Order.  
20

21          4.       This order is binding upon the parties to this action, their officers, agents,  
22 servants, employees, and attorneys, and upon those persons in active concert or participation  
23 with them who receive actual notice of the order by personal service or otherwise.

24          5.       This order is effective immediately upon issuance provided Zango gives  
25 security in the amount of \$\_\_\_\_\_ for the payment of costs and damages which may be

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[PROPOSED] – 4

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1 incurred by any party to be wrongfully restrained by this order. Said bond must be posted by  
2 4:30 p.m. on May \_\_\_\_, 2007, or this injunction is void.

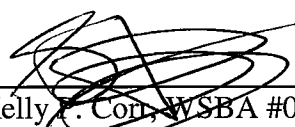
3 6. This temporary restraining order shall expire at midnight of the 10th day after  
4 issuance unless extended or vacated by court order or stipulation of the parties.

5 DATE AND HOUR OF ISSUANCE: May \_\_\_\_, 2007 at \_\_\_\_ a.m/p.m.

6  
7  
8 THE HONORABLE JOHN C. COUGHENOUR  
9 UNITED STATES DISTRICT COURT JUDGE

10 Presented by:

11 CORR CRONIN MICHELSON  
12 BAUMGARDNER & PREECE LLP

13 By:   
14 Kelly E. Corr, WSBA #00555  
15 Steven W. Fogg, WSBA #23528  
16 Attorneys for Plaintiff  
17 Zango, Inc.  
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**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of record for Plaintiff Zango, Inc. herein.

I hereby certify that on May 29, 2007, I electronically filed the attached foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons:

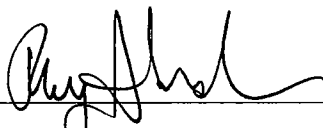
Bruce E.H. Johnson  
Davis Wright Tremaine LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101

and I hereby certify that I have delivered via U.S. Mail the document to the following non CM/ECF participants:

N/A

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 29 day of May, 2007, at Seattle, Washington.

  
\_\_\_\_\_  
Joyce Abraham

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